

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**PENSION BENEFIT GUARANTY
CORPORATION,**

Plaintiff,

v.

**FAY CONSTRUCTION CO., INC. and FAY
DEVELOPMENT COMPANY, INC.,**

Defendants.

Case No. 2:24-cv-1860-JDW

ORDER

AND NOW, this 31 day of October, 2024, upon consideration of Plaintiff Pension Benefit Guaranty Corporation's ("PBGC") Motion For Default Judgment (ECF No. 14), for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **GRANTED** and a judgment by default is **ENTERED** in favor of PBGC under FED. R. CIV. P. 55(b)(2). It is **FURTHER ORDERED** that:

1. Pursuant to 29 U.S.C. § 1362(a) and (b), Defendants Fay Construction Co., Inc. and Fay Development Co., Inc. (the "Fay Defendants") are jointly and severally liable to PBGC for the Unfunded Benefits Liabilities ("UBL") of \$1,529,572, plus pre-judgment interest computed under 29 C.F.R § 4062.7;

2. Pursuant to 29 U.S.C. § 1307, the Fay Defendants are jointly and severally liable to PBGC for the total premium liability of \$19,403.37, plus interest and penalties;

3. The Settlement Agreement between the PBGC and Fay Defendants, entered into on June 6, 2022, is a valid, binding, and enforceable contract;

4. Pursuant to Sections 3(a), 3(b), and 3(f) of the Settlement Agreement: (A) Fay Construction and Fay Development and their directors, officers, shareholders, employees, agents, successors-in-interest, and assigns shall use their best efforts to complete the renovation and close on a sale of the commercial rental property in Middletown Township, Delaware County, Pennsylvania identified in the Settlement Agreement (the "Rental Property"), (B) Fay Construction and Fay Development and their directors, officers, shareholders, employees, agents, successors-in-interest, and assigns shall provide PBGC and this Court with semiannual reports on efforts to complete the renovation and close on the sale of the Rental Property; and (C) Fay Construction and Fay Development shall not sell the Rental Property for a price resulting in net proceeds to PBGC of less than \$319,000 minus rents paid to PBGC under Section 3(i) of such Settlement Agreement without PBGC's prior written consent;

5. Fay Defendants shall pay past-due rent at a rate of \$1,525 per month from June 6, 2023, plus pre-judgment interest and continue paying \$1,525 per month until the close of sale of the Rental Property;

6. PBGC is awarded all its costs of litigation in this case, pursuant to 29 U.S.C. § 1303(e)(5); and

7. This Court shall retain jurisdiction in this proceeding to adjudicate any allegations that this Order has been violated.

BY THE COURT:

/s/ Joshua D. Wolson

JOSHUA D. WOLSON, J.